

STATE CONTROLLER POLICY

EXECUTING STATE CONTRACTS WITH A FISCAL YEAR VALUE OF \$50,000 OR LESS

A policy setting forth the requirements for state agencies and institutions when processing state contracts with a value of \$50,000 or less.

Background

CRS 24-30-202 (10) designates the Attorney General as the legal advisor to the State Controller. The statutes also require that any questions concerning the legality of any obligation or claim be referred to the Attorney General. Historically, State Fiscal Rules have required the Office of the Attorney General or a designated Special Assistant Attorney General to perform a legal sufficiency review on every state contract regardless of the dollar amount.

Policy

The requirement to perform a legal review of state contracts, pursuant to State Fiscal Rule 3-1 (1 CCR 101-1) is hereby waived within the thresholds established by and consistent with the limitations contained in this policy.

Questions concerning this policy or any question of a general nature concerning contracting should be directed to the State Contracting Unit in the State Controller's Office. Questions concerning the legal sufficiency of any contract should be directed to the Office of the Attorney General or the designated Special Assistant Attorney General for your state agency or institution.

Agency Eligibility

State agencies that have been delegated State Controller signature authority may execute contracts and contract amendments without a legal sufficiency review within the scope of their delegation in accordance with the rules set forth in this policy.

State agencies without delegated State Controller signature authority are required to forward all contracts and contract amendments to the State Controller's Office for review and processing in accordance with the rules set forth in this policy.

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Legal Review Thresholds

A legal review by the Office of the Attorney General or designated Special Assistant Attorney General **will not be required** for the following:

1. Contracts having a fiscal year value of no more than \$50,000. For example, a four-month contract for consulting services has an effective date of March 1st with a monthly cost of \$10,000. This would equate to a fiscal year cost of \$40,000 and therefore meets the exception.
1. Contract amendments for contracts having a beginning fiscal year term value of no more than \$50,000 that do not change the fiscal year value to an amount that exceeds \$50,000. For example, a contract for computer maintenance service has a term of July 1st through June 30th with a monthly cost of \$4,000 that is amended to add additional telephone system maintenance to begin January 1st with an additional cost of \$150 a month. This would equate to a fiscal year value of \$48,900 and therefore meets the exception.
2. Multi-year contracts having a beginning fiscal year term value of no more than \$50,000, that do not contain renewal clauses that allow subsequent term amounts to exceed a fiscal year value of more than \$50,000. (Contracts that do not specifically state the maximum value for subsequent years do not meet this exception). For example, a one-year contract for janitorial services at \$4,000 per month, with four one-year options containing the same price, terms, and conditions, meets this exception.

A legal review by the Office of the Attorney General or designated Special Assistant Attorney General **is required** for each of the following contracts or contract amendments:

1. Any contract, or agreement used to settle a dispute and any amendment used to modify a settlement agreement.
2. Any contract involving a disbursement made in violation of CRS 24-30-202(1) or (3), which prohibits payments being made prior to the approval of a commitment voucher by the State Controller or a delegate, and prohibits obligations against the state in excess of or for any expenditure not authorized by appropriation.
3. Any contract that does not contain a maximum value.
4. Any contract or amendment having an annualized value of more than \$50,000.
5. Any multi-year contract that contains an option or maximum amount for any year that exceeds or is expected to exceed \$50,000.
6. Any master task order contract.

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Legal Review of Contracts at the Attorney General's Office

State agencies and institutions still may seek a formal legal review of any individual contract that meets one of the legal review exceptions by providing a written memorandum with the contract packet stating what the specific risk factors are and the specific clauses in the contract that cause them concern. Contract packets received by the State Controller's Office that are being routed to the Attorney General's Office, that do not contain a memorandum with the required information will not be forwarded to the Attorney General's Office. The SCO will contact the agency and request them to provide a written justification for the requested legal review. If a response is not received by the SCO within five days the contract will be reviewed by the SCO to determine if a legal review by the Attorney General's Office is necessary. The Attorney General's Office will provide legal comments and recommendations directly to the agency and institution seeking the advice. If during the review significant deficiencies are noted in a contract, the contract and the memorandum stating the reason(s) for the disapproval will be forwarded to the State Controller in accordance with existing practice.

The expectation is that legal resources will be used for more complex contracts and requests for proposals, as well as up-front development of improved contract formats on recurring, low-dollar acquisitions. The Office of Attorney General will report to the State Controller any instances in which agencies are requesting a legal review of contracts that fall within the thresholds established by and consistent with the limitations of this policy. These agencies will be contacted and, if necessary, provided training to allow them to take advantage of this policy.

Agency/Institution Controller Delegate Responsibilities

CRS 24-30-202(2) requires that the State Controller or a delegate examine each contract to insure that it is within legislative intent, that funds are available, that it is fair and reasonable, and that the contract is legally sufficient. To ensure compliance with the above, State Controller delegates will approve contracts within the scope of this policy only after they are satisfied, through personal examination or examination by authorized agency staff delegated the responsibility, that:

1. The agency has performed a risk assessment ensuring that the contract does not contain a provision requiring the agency/institution to indemnify, hold harmless, or defend contractors, or otherwise include provisions that create potential state liability for personal injury or damage to personal property. Agencies may agree to commercially reasonable limitation of liability provisions consistent with Fiscal Rule 2-2. Questions concerning the use of liability provisions shall be referred to the Office of the Attorney General or designated special assistant attorneys general.
2. The contract or amendment complies with this policy.

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3. The contract includes the Colorado *Special Provisions*. Other than department or name changes to the signature blocks, the Special Provisions may not be modified without State Controller approval. The term "Not Required" may be inserted in the Attorney General approval signature line in contracts within the scope of this legal review waiver.
4. The contract modification provisions are consistent with the State Controller's *Contract Modification Policy*.
5. The contract adequately defines the requirement and clearly establishes price/rates and payment provisions that are "fair and reasonable".
6. The contract attachments and exhibits are properly incorporated by reference and affixed to the contract.
7. The contract is signed by the contractor or an agent of the contractor who has the authority to execute the contract on behalf of the contractor.
8. The contract has been signed by the principal representative or head of the agency or by an authorized delegate.
9. The contract approvals--e.g. Purchasing, State Buildings Programs, Real Estate Services, and the Department of Personnel Personal Services Review Program have been obtained when required.
10. The contract is encumbered and processed in accordance with the SCO *Contract Processing Guide*, including entry on CLIN or individual entry of the vendor name, contract amount, date, and term of the contract in the agency contract log.
11. The contract has been entered on the COFRS CLIN Table or the agency contract log in such a manner that it can be identified as a contract falling within this policy.

Arthur L. Barnhart
State Controller